



May 16, 2001

Ms. Michelle Simpkins  
Winstead Sechrest & Minick P.C.  
100 Congress Avenue, Suite 800  
Austin, Texas 78701

OR2001-2024

Dear Ms. Simpkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147263.

The Brushy Creek Municipal Utility District (the “district”), which you represent, received a request to inspect all documents prepared by an attorney and received by the district since May 1, 2000. You indicate that a portion of the responsive information is the subject of previous requests for decisions that the district has submitted to this office. To the extent this office has already issued decisions allowing you to withhold the same information that is responsive to the instant request, the district may rely upon the decisions as previous determinations and withhold the information from the requestor. *See* Open Records Decision No. 673 (2001). You also indicate that the district has released a portion of the responsive information to the requestor. You claim that the remaining responsive information consists of memoranda that are excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107 provides in relevant part that information is excepted from required public disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107(1). Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Based on our review of the submitted memoranda, we conclude that these documents reveal legal advice or opinion and are therefore excepted from disclosure under section 552.107(1) of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

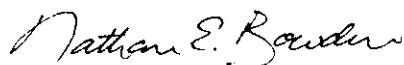
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<sup>1</sup>Based on this finding, we need not address your argument under section 552.111.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Nathan E. Bowden".

Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/MJB/sdk

Ref: ID# 147263

Encl: Submitted documents

cc: Mr. John C. McLemore  
8400 Cornerwood Drive  
Austin, Texas 78717  
(w/o enclosures)